IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

ORDER

Ravi Bhatt Vs. State of Rajasthan & Another
(SB Civil Writ Petition No.6452/1997)

SB Civil Writ Petition under Article
226 & 227 of the Constitution of India.

Date of order: October 05, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. R.S.Mehta, for the petitioner.

Mr. R.P.Kuldeep, Addl.Govt. Advocate for State.

BY THE COURT:

Challenge in the instant writ petition is to the orders dated February 28, 1996 and October 4, 1996 of the Mining Engineer Dholpur as well as the order dated June 9, 1997 of Deputy Secretary Mines dismissing the revision of petitioner.

2. Contextual facts depict that the petitioner was granted mining lease for sand stone in village Kudina District Dholpur, which was valid upto February 21, 1980. The petitioner applied for renewal of mining lease. Since the application for renewal of mining lease could not be disposed of in time it came under the category of deemed rejection. On filing revision application the deemed rejection was set aside on May 18, 1982 and the subordinate officers were granted time to dispose of the renewal application. Later on the State Government cancelled the order dated May 18, 1982 in exercise of suo moto review power. The said order was called in question by

the petitioner by filing revision application before the Central Government, which was allowed on August 31, 1990 and lease was ordered to be restored in favour of the petitioner. The petitioner continued mining operation upto November,1991. The State Government computed the dead rent to Rs.15,400/- yearly w.e.f. February 27, 1980. Pursuant to the order dated July 28, 1983 the petitioner continuously deposited the dead rent Rs.15,400/- yearly. The period of five years came to an end on February 21, 1985. As per the rules the revision of dead rent further became due. The Superintending Engineer vide order dated February 10, 1986 revised the dead rent for the period from February 22, 1985 to February 21, 1990. In doing so he had taken into consideration past dead rent Rs.15,400/- and as per Rule 18 of the Rajasthan Minor Mineral Concession Rules,1986 (for short `1986 Rules') he revised/ fixed the dead rent at Rs.23,543/- yearly for the period from February 22, 1985 to February 21, 1990. The petitioner paid all his dues upto February 21, 1990 and obtained no dues certificate. The petitioner filed application for renewal of mining lease well within time for the period from February 22, 1990 to February 21, 2000, but no action was taken. Meanwhile the Central Government passed the order dated August 31, 1990 for restoring the mining lease in favour of the petitioner. Thereafter the Mining Engineer Dholpur issued the letter dated February 28, 1992 in supersession of all earlier orders in this regard including the order of the State Government and the order of Superintending Mining Engineer also again revised/ fixed dead rent for the period from February 22, 1980 to February 21, 1985 and February 22, 1985 to February 21, 1990. The contention of the petitioner is that after lapse of 12 years the dead rent was increased arbitrarily and illegally and the Mining Engineer has got no power under the Rules to refix the dead rent in supersession of earlier orders. The

copy of the letter dated February 28, 1992 was not sent to the petitioner, but after some time a letter dated August 5, 1992 was sent to the petitioner in which a reference of notice dated March 25, 1992 was made. The petitioner moved application under section 57 of 1986 Rules for rectification of mistake in the orders dated February 28, 1992 and March 25, 1992. When no action was taken the petitioner filed the writ petition, which came to be decided on September 4, 1996 with direction to respondents to decide the application for rectification. Vide order dated October 4, 1996 the rectification application has been dismissed by a non speaking order and without providing any opportunity of hearing to the petitioner. Thereafter the petitioner submitted representations on October 14, 1996 and October 16, 1996 against the order dated October 4, 1996 but no order was passed on the said representations. The revision petition filed by petitioner under section 57 of 1986 Rules was dismissed by Deputy Secretary Mines on June 9, 1997. Against the said orders that the instant writ petition has been preferred by the petitioner.

3. The respondents submitted reply to the writ petition justifying the act of Mining Engineer. The petitioner submitted rejoinder to the reply of writ petition.

4. I have heard learned counsel for the parties and carefully scanned the material on record.

5. Rule 57 of 1986 Rules provides thus:-

> "57. Rectification of mistakes.- Any clerical or arithmetical mistake in any order passed by Government or any other officer

under these rules and any error arising therein from accidental slip or omission may be corrected by the Government or officer, as the case may be:

Provided that no order prejudicial to any person shall be passed unless he has been given a reasonable opportunity for stating his case."

6. In my opinion the dead rent fixed by the Mining Engineer on February 10, 1986 could be revised only within a period of six months. As already noticed the petitioner after paying all his dues obtained no dues certificate from the office of mining engineer On May 18, 1990 thereafter the dead rent was wrongly revised for the period February 22, 1980 to February 21, 1985 and February 22, 1985 to February 21, 1990 vide order dated February 28, 1992. The rectification application of the petitioner had not been decided in accordance with Rule 57 of 1986 Rules. Neither show cause notice was issued to petitioner nor opportunity of hearing was afforded to him. The order of the Mining Engineer thus is without jurisdiction and against the principles of natural justice. The Deputy Secretary while deciding the revision petition had not properly considered Rule 57 of 1986 Rules and committed illegality in dismissing the revision petition.

7. For these reasons, the writ petition stands allowed and the orders dated February 28, 1996 and October 4, 1996 of Mining Engineer Dholpur as well as the order dated June 9, 1997 of Deputy Secretary Mines are set aside. There shall be no order as to costs.

(Shiv Kumar Sharma)J.

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